

EXHIBIT 58

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**Classified Declaration of Mr. Jeffrey N. Rapp
Director, Joint Intelligence Task Force for Combating Terrorism**

1. (U) Pursuant to 28 U.S.C. § 1746, I, Jeffrey N. Rapp, hereby declare that, to the best of my knowledge, information and belief, and under the penalty of perjury, the following is true and correct:

Preamble

2. (U) I submit this Declaration for the Court's consideration in the matter of *Al-Marri v. Hanft*, Case Number 2:04-2257-26AJ, pending in the United States District Court for the District of South Carolina.

3. (U) Based on the information that I have acquired in the course of my official duties, I am familiar with all the matters discussed in this Declaration. I am also familiar with the interviews of Ali Saleh Mohamed Kahlah Al-Marri (Al-Marri) conducted by agents of the Federal Bureau of Investigation and by personnel of the Department of Defense (DoD) once the DoD took custody of Al-Marri on 23 June 2003 after he was declared an enemy combatant by the President of the United States.

Professional Experience as an Intelligence Officer

4. (U) I am a career Defense Intelligence Agency Defense Intelligence Senior Executive Service member appointed by the Director of the Defense Intelligence Agency. I report to the Director of the Defense Intelligence Agency. My current assignment is as the Director of the Joint Intelligence Task Force for Combating Terrorism (JITF-CT). JITF-CT directs collection, exploitation, analysis, fusion, and dissemination of the all-source foreign terrorism intelligence effort within DoD. In addition to my current assignment, I have previously served as the first

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Director of the National Media Exploitation Center and as the civilian Deputy Director for the Iraq Survey Group in Qatar.

5. (U) My active duty military intelligence career in the United States Army included service as the senior intelligence officer for the 1st Infantry Division, when deployed to Bosnia-Herzegovina; Commander of the 101st Military Intelligence Battalion, 1st Infantry Division, Fort Riley Kansas; Commander of the forward-deployed 205th Military Intelligence Brigade in Europe; and Deputy Director for the Battle Command Battle Lab, U.S. Army Intelligence Center at Fort Huachuca, Arizona. I also directed a South Asia regional analytic division in the Defense Intelligence Agency Directorate for Analysis and Production that was awarded the National Intelligence Meritorious Unit Citation for its accomplishments.

6. (U) My military decorations include the Legion of Merit, Defense Superior Service Medal, Defense Meritorious Service Medal, and Army Meritorious Service Medal. I am a graduate of the U.S. Army War College. I hold a Masters degree in strategic intelligence from the Joint Military Intelligence College.

Declaration of Al-Marri as an Enemy Combatant

7. (U) On June 23, 2003, President George W. Bush determined that Al-Marri is an enemy combatant. The President's determination was based on information derived from several Executive Branch agencies in a multi-layered Executive Branch evaluation. The evaluation process applied to Al-Marri is essentially the same as that for United States citizens suspected of being enemy combatants. See generally 150 Cong. Rec. S2701, S2703-S2704 (daily ed. March 11, 2004) (reprinting Feb. 24, 2004, remarks of Alberto R. Gonzales, Counsel to the President,

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before the American Bar Association's Standing Committee on Law and National Security). As a general matter, the process involves assessments by the following agencies: Central Intelligence Agency, Department of Defense, Department of Justice, and the White House. First, following an initial assessment that a detainee might be an enemy combatant, the Director of Central Intelligence makes a written recommendation to DoD concerning whether DoD should take the detainee into custody. The Secretary of Defense then makes a second written assessment based on the CIA's report and intelligence developed by DoD, and provides that assessment (accompanied by the CIA and DoD reports) to the Attorney General. The Attorney General, in turn, provides DoD with a recommendation concerning whether the detainee should be taken into custody as an enemy combatant, as well as an opinion concerning the lawfulness of such an action. The Attorney General's recommendation is informed by the CIA and DoD reports as well as a memorandum from the Department of Justice's Criminal Division setting forth factual information concerning the detainee supplied by the FBI, and a formal legal opinion from the Department's Office of Legal Counsel (OLC) analyzing whether petitioner is appropriately designated an enemy combatant. The Attorney General's recommendation package to the Secretary includes the Criminal Division's fact memorandum and OLC's legal opinion. The Secretary forwards to the President a package containing all of the foregoing material. White House counsel reviews the package, makes his own assessment, and provides the materials (including his own assessment) to the President. The President then determines on the basis of the foregoing whether the detainee is an enemy combatant.

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8. ~~(S//NF)~~ Al-Marri, also known as Abdulkareem A. Almuslam, is currently being detained in the Naval Consolidated Brig in Charleston, South Carolina. The President of the United States has determined that he is closely associated with al Qaeda, an international terrorist organization with which the United States is at war. As detailed below, Al-Marri is an al Qaeda "sleeper" agent sent to the United States for the purpose of engaging in and facilitating terrorist activities subsequent to September 11, 2001. Al-Marri currently possesses information of high intelligence value, including information about personnel and activities of al Qaeda. Prior to arriving in the United States on September 10, 2001, Al-Marri met personally with Usama Bin Laden (Bin Laden) and volunteered for a martyr mission or to do anything else that al Qaeda requested. Al-Marri was assisted in his al Qaeda assignment to the United States by at least two high-level al Qaeda members: September 11, 2001 mastermind Khalid Shaykh Muhammed (KSM); and al Qaeda financier and September 11, 2001 moneyman Mustafa Ahmed Al-Hawsawi (Al-Hawsawi). Al Qaeda sent Al-Marri to the United States to facilitate other al Qaeda operatives in carrying out post-September 11, 2001 terror attacks. Al Qaeda also asked Al-Marri to explore computer hacking methods to disrupt bank records and the U.S. financial system. In addition, Al-Marri was trained by al Qaeda in the use of poisons and had detailed information concerning poisonous chemicals stored on his laptop computer. Information about Al-Marri's relationship with and activities on behalf of al-Qaeda has been obtained from and corroborated by multiple intelligence sources.

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~~SECRET//NOFORN~~**Al-Marri's Background and Training**

9. (U) Al-Marri is a dual national of Saudi Arabia and Qatar. Al-Marri attended college in the United States; in 1991, he obtained a bachelor's degree in business administration from Bradley University in Peoria, Illinois.

10. ~~(S//NF)~~ Al-Marri trained at Bin Laden's Afghanistan terrorist training camps for 15-19 months between approximately 1996 and 1998. Among other things, al-Marri received training in the use of poisons at an al-Qaeda camp.¹

11. (U) Al-Marri entered the United States with his family on September 10, 2001, purportedly to pursue a graduate degree in computer science at Bradley University. School officials at Bradley reported that Al-Marri contacted them in July 2001 about beginning his studies during the Fall 2001 semester. The school officials felt that Al-Marri was in a rush to commence his studies in the United States. By December 11, 2001, when the FBI interviewed Al-Marri, he had rarely attended classes and was in failing status.

Al-Marri's al Qaeda Activities

12. ~~(S//NF)~~ While Al-Marri seemingly entered the United States in order to pursue his education, in fact, he had been directed by al Qaeda to enter the country as a sleeper agent. In the summer of 2001, KSM introduced Al-Marri to Bin Laden. During his meeting with Bin Laden, Al-Marri offered to be an al Qaeda martyr or to do anything else that al Qaeda requested. Bin

¹ ~~(S//NF)~~ This statement is derived from specific intelligence sources. This declaration does not identify the specific source of such information. Such information would be highly classified and would require significant additional security procedures, including additional clearances and storage and handling restrictions that it is my understanding are not currently in place. That information could be provided to the Court if the Court deems it necessary.

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Laden and KSM agreed that Al-Marri would travel to the United States to establish cover. Al Qaeda instructed Al-Marri that it was imperative that he arrive in the United States prior to September 11, 2001, and that if Al-Marri could not do so, that he should cancel all plans and go to Pakistan. KSM subsequently communicated with Al-Marri's brother, Jaralla Saleh Mohamed Kahla Al-Marri, who is currently being detained as an enemy combatant by the United States at Guantanamo Bay, Cuba, about Al-Marri's activities in the United States.

13. ~~(S//NF)~~ KSM considered Al-Marri an ideal sleeper agent for the United States, because Al-Marri had completed his undergraduate degree in the United States, had no known criminal record, and had a family with whom he could travel (thus lessening scrutiny relative to a male traveling alone). The al Qaeda leadership was also attracted to Al-Marri's profile because it differed significantly from that of the September 11, 2001 hijackers. In addition to acting as a point of contact for al Qaeda operatives arriving in the United States, al Qaeda instructed Al-Marri to explore possibilities for hacking into the main-frame computers of banks with the objective of wreaking havoc on U.S. banking records and thus damaging the country's economy.

14. ~~(S//NF)~~ Al Qaeda asked Al-Hawsawi to assist Al-Marri. Al-Hawsawi operated out of the United Arab Emirates (UAE) until September 2001. While in the UAE, Al-Hawsawi provided logistical support for the September 11, 2001 hijackers, as well as maintained contact with the hijackers' ringleader, Mohamed Atta. Al-Hawsawi also served as a conduit for funds to the hijackers while they were in the United States.

15. ~~(S//NF)~~ Al-Marri traveled to the UAE at al Qaeda's request in August 2001. Al-Hawsawi met him at the Dubai airport. While in Dubai, Al-Hawsawi provided Al-Marri with approximately

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\$10,000-\$13,000 based on Al-Marri's word that KSM had authorized the expenditure. Al-Hawsawi called KSM later to verify the authorization. Al-Hawsawi also gave Al-Marri an additional approximately \$3,000 to purchase a laptop computer. This laptop computer, along with the receipt for its purchase, was later recovered from Al-Marri's residence in Peoria, Illinois.

Analysis of Laptop Computer

16. (U) The FBI interviewed Al-Marri in Illinois on October 2, 2001, and again on December 11, 2001. Subsequent to the second of these interviews, the FBI conducted a forensic examination of Al-Marri's aforementioned laptop computer. The results of that examination are discussed by category below.

A. Chemical Research

17. (~~S//NF~~) The analysis of Al-Marri's laptop computer revealed that Al-Marri was conducting research consistent with the tradecraft and teachings associated with al Qaeda and other terrorist organizations regarding use of chemicals as weapons of mass destruction. Numerous files and bookmarked internet sites were found relating to the research and purchase of chemicals, specifically potassium cyanide, sodium cyanide, sulfuric acid, and arsenic. A computer folder titled "chem" contained favorite bookmarked websites to include the sites of industrial chemical distributors. This folder also contained the Occupational Safety and Health Administration (OSHA) website homepage, and a website listing "Immediately Dangerous to Life and Health" (IDLH) chemical concentrations. Other internet sites visited by Al-Marri included the topics of "The Manufacture of Hydrogen Cyanide," giving step-by-step instructions to make hydrogen cyanide; "Cyanide Poisoning and Cyanide Antidotes," giving technical and medical

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descriptions of the effects of various cyanides; and "Toxicity Profiles: Cyanides," giving technical data on the doses and lethal effects of various cyanides.

18. (S//NF) The investigation has revealed that computer searches conducted by Al-Marri were primarily devoted to technical and ordering information on various cyanides. However, his interest in cyanides is incongruous with Al-Marri's educational and professional experience. Furthermore, the highly technical information found on Al-Marri's laptop computer far exceeds the interests of a merely curious individual. Al-Marri's interest in cyanide appears consistent with the documented interests of al Qaeda and other terrorist groups in the use of cyanides. For example, Al-Marri's interest in the two cyanide salts, potassium cyanide and sodium cyanide, are known precursors to the formation of hydrogen cyanide and are a relatively safe means of handling cyanide. Hydrogen cyanide is an exceedingly toxic substance. The use of this substance was taught at terrorist training camps in Afghanistan. In addition, Al-Marri's interest in sulfuric acid is noteworthy as sulfuric acid is specified in terrorist training and is utilized as the second ingredient in a hydrogen cyanide binary device. In the attacks on the Japanese subway system, Aum Shinrikyo used sulfuric acid with hydrogen cyanide in improvised dissemination devices.

B. Communication Tactics

19. (U) According to internet service provider records, on September 22, 2001, five email accounts, which Al-Marri later stated belonged to him, were created from the same computer during one log-on session. The accounts were William274@hotmail.com, Jefferson038@hotmail.com, Howard050@yahoo.com, Drake425@yahoo.com, and Kathy050@yahoo.com. The computer on which these email accounts were created was part of

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the network operated by Western Illinois University in Macomb, Illinois.

20. (S//NF) Among the messages located in the Drake425@yahoo.com, Kathy050@yahoo.com, and Jefferson038@hotmail.com email accounts were three identical draft email messages written in English on September 22, 2001. These three messages were all addressed to the same internet email account -- an account that has been linked to KSM -- and appear not to have been sent, but rather stored in "draft" form. The identical email messages were as follows, with all errors as in the originals:

"hi

I hope every thing is ok with you and your family. I have started school ok. It is hard but I had to take 9 hours to meet the school standard. Me and my family are ok. I want to here from you soon can you contact me by email or on 701-879-6040.

P.S.

I have tried to contact you at your uncle ottowa but I could not get in."

21. (S//NF) In the United States, the area code 701 is assigned to North Dakota. However, subscriber checks for telephone number 701-879-6040 were negative. Upon further analysis, it was determined that telephone number 701-879-6040 is a coded version of Al-Marri's cellular telephone number. [REDACTED]

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22. (S//NF) [REDACTED]

23. (S//NF) [REDACTED]

24. (S//NF) [REDACTED]

C. Additional Computer Files

25. (U) Analysis of Al-Marri's laptop revealed computer files containing Arabic lectures by Bin Laden and his associates on the importance of jihad and martyrdom, and the merits of the Taliban regime in Afghanistan. These lectures instructed that Muslim scholars should organize opposition to Jewish and Christian control of Palestine, Lebanon, and Saudi Arabia; that ordinary Muslims should train in Bin Laden camps in Afghanistan by entering through Pakistan; and that clerics who claim that Islam is a religion of peace should be disregarded. There were also computer files containing lists of websites titled "Jihad arena," "Taliban," "Arab's new club - Jihad club," "Tunes by bullets," and "martyrs." Other computer folders contained additional favorite bookmarked websites, including sites related to weaponry and satellite equipment.

26. (U) Photographs of the September 11, 2001 terrorist attacks on the World Trade Center

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were also discovered on the computer along with various photographs of Arab prisoners of war held by authorities in Kabul, Afghanistan; an animated cartoon of an airplane flying at the World Trade Center; and a map of Afghanistan.

27. (~~SECRET~~) In addition, Al-Marri's laptop computer contained numerous computer programs typically utilized by computer hackers; "proxy" computer software which can be utilized to hide a user's origin or identity when connected to the internet; and bookmarked lists of favorite websites apparently devoted to computer hacking. Al Qaeda had tasked Al-Marri with exploring the possibility of hacking into the main frame computers of banks inside the U.S. to wipe out balances and otherwise wreak havoc with banking records in order to damage the U.S. economy. Al-Marri had discussed with al Qaeda other hacking operations as well, including hacking into the computers of banks and credit card companies, obtaining credit card account numbers, and using these numbers to book airline reservations on five or six flights. This was in accord with the belief that fully booking flights with false reservations would result in losses to the airline industry.

Telephone Communications

28. (U) After the terrorist attacks of September 11, 2001, calling cards attributed to Al-Marri were utilized in attempts to contact the United Arab Emirates (UAE) telephone number of Mustafa Ahmed Al-Hawsawi (the "Al-Hawsawi number"). Analysis of Al-Marri's cellular telephone records indicated that Al-Marri utilized cell sites during some of the same times and in the same geographical areas as the attempted calls to the Al-Hawsawi number.

29. (U) On September 23, 2001, a telephone call was attempted from a pay telephone in a store in Peoria, Illinois to the Al-Hawsawi number. The calling card used for that call was used again

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four days later, on September 27, 2001, from a cellular telephone subscribed to by Al-Marri.

Thereafter, on October 14, 2001 the same calling card was used again from a pay telephone in a gas station in Springfield, Illinois (approximately sixty-five miles from Peoria) to the Al-Hawsawi number. During the same time period and on the same day, Al-Marri's cellular telephone utilized cell sites in Springfield and Lincoln (approximately 20 miles north of Springfield), Illinois.

30. (U) Approximately three weeks later, on November 4, 2001, a different calling card was used from a pay telephone in Chicago, Illinois to attempt a call to the Al-Hawsawi number. On the same day, Al-Marri's telephone records indicate that Al-Marri's cellular telephone utilized sites in Chicago to access its voicemail system and to call Al-Marri's home telephone number. The calling card used on November 4, 2001, was then used again three days later to place a call from Al-Marri's home telephone number.

Credit Card Theft

31. (U) Upon the seizure of his laptop computer, Al-Marri provided the computer carrying case. Within the case a folded two-page handwritten document was found that listed approximately thirty-six credit card numbers, the names of the account holders, an indication as to whether each credit card number was Visa or Mastercard, and the expiration dates. The expiration dates on the list reflected past expiration dates for each of the cards. Al-Marri was not listed as the account holder for any of the approximately thirty-six cards. Approximately seventeen of the thirty-six credit card numbers were issued by domestic banks. Based on the records of the issuing domestic banks, the credit card numbers were either currently valid or were once valid and were issued to persons other than Al-Marri.

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32. (U) During the forensic examination of Al-Marri's laptop computer, computer files containing over 1,000 apparent credit card numbers were found stored in various computer files. The examination of Al-Marri's laptop computer also revealed computer folders called "hack," "id," "crack," "final," and "online store," among others. These computer folders contained a list of numerous favorite bookmarked internet websites relating to computer hacking; fake driver's licenses and other fake identification cards; buying and selling credit card numbers; and processing credit card transactions. When agents visited an internet website that was bookmarked in the "hack" folder of Al-Marri's laptop computer, the internet website appeared to be an electronic bulletin board that allows internet users to post and advertise messages. Topics advertised on this website included: "sale CC," "I buy cc (with exp. data not less than 2003)"; "I will buy credit Card"; "I sell new creditcard (Visa, maser, expres. . .)"; "Credit card for sae. 0.3 \$/1cc w/o CVV"; and "I sell #cc without cvv2." As a result of the information discovered within Al-Marri's laptop computer and carrying case, the material witness warrant was vacated and Al-Marri was immediately taken into custody pursuant to a charge of unauthorized possession of credit card numbers with intent to defraud, in violation of 18 USC §1029(a)(3). In February 2002, Al-Marri was indicted on this charge in the SDNY.

Analysis of Credit Card Numbers

33. (U) Fraudulent purchases at "AAA Carpet" were identified on several of the credit card numbers that were in Al-Marri's possession. "AAA Carpet" has been determined to be a fraudulent business for which an individual named Abdulkareem A. Almuslam opened bank

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accounts in Macomb, Illinois, in July and August 2000. Signature cards and account applications from the three banks in Macomb, Illinois, at which Almuslam opened accounts have significant similarities to the signatures of Al-Marri on his passport and other documents. In addition, an eye doctor in the area identified Al-Marri in a photographic array as a patient the doctor treated under the name Almuslam. Latent print analysis of original documents from the banks and the eye doctor's office resulted in three positive fingerprint identifications of Al-Marri.

During this time period, Al-Marri, aka Almuslam, also opened an account to process credit card transactions for AAA Carpet. Records for this account indicate that twelve credit cards were processed for AAA Carpet during the time the account was active. All twelve transactions were later voided after the true cardholders notified their credit card providers of the fraudulent charges. Investigation to date has confirmed six of the twelve credit cards that received charges to AAA Carpet were found within Al-Marri's laptop computer. Al-Marri, aka Almuslam, also created an account on June 13, 2000 with PayPal.com, an internet service that allows the electronic transfer of funds to anyone who possesses an email account.

34. (U) As a result of the above investigation, a second indictment was filed in SDNY on January 22, 2003 against Al-Marri alleging two counts of making false statements to federal agents for denying his calls to the UAE telephone number of Al-Hawsawi and for not advising of his travel to the United States in 2000, in violation of 18 USC §1001(a)(1) and (2); three counts of making false statements to a financial institution for opening bank accounts under a false name, in violation of 18 USC §1014; and one count of using a means of identification of another person for unauthorized use of a social security account number to open a bank account, in violation of

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18 USC §1028(a)(7). The two indictments against Al-Marri were subsequently consolidated. In April 2003, Al-Marri withdrew his waiver of venue, which allowed him to be tried in the SDNY; he was then indicted on May 22, 2003 in the Central District of Illinois on the same seven charges.

Conclusion

35. (U) In conclusion, investigation has determined that Al-Marri was an active al Qaeda operative at the time of his entry into the United States on September 10, 2001. Al-Marri was sent to the United States at the behest of al Qaeda. Upon his arrival in the United States, Al-Marri engaged in conduct in preparation for acts of international terrorism intended to cause injury or adverse effects on the United States. Al-Marri's status has been subject to a rigorous review process and it has been determined that Al-Marri represents a continuing grave danger to the national security of the United States. Al-Marri must be detained to prevent him from aiding al Qaeda in its efforts to attack the United States, its armed forces, other governmental personnel, or citizens.

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REDACTED

Jeffrey N. Rapp
Director, Joint Intelligence Task Force for
Combating Terrorism

Executed on 9 September 2004 in
Washington, D.C.

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